THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:6-4-2006

WRIT PETITION No. 22210 OF 2004

BETWEEN:

M.S.C.Constructions, rep.by its Managing Director Sri M.S.Chandraiah.

…Petitioner

And

The Director, Town Planning, Government of A.P., Hyderabad and another.

…Respondents

ORDER:

The petitioner seeks to issue a writ of mandamus, declaring the proceedings of the first respondent dated 19-8-2003 in Lr.Roc.No.6444/2003/H2 and consequently the proceedings of the 2nd respondent dated 28-2-2004 in No.G/714/2003 as arbitrary, illegal and contrary to the statutory provision and violation of natural justice.

Heard the learned counsel appearing for the petitioner as well as the Government Pleader for Municipal Administration and Rural Development appearing for the first respondent and the standing counsel appearing for the second respondent.

It is the case of the petitioner that he purchased an area of 1885.89 Sq.Meters in Sy.No.1137 of Wanaparthy Municipality with a view to construct row houses after demolishing the old houses. Accordingly, he filed an application before the second respondent for building permission enclosing all the required documents. He also paid the required fee including development charges and betterment charges. As the second respondent could not pass any orders on the application seeking building permission within the statutory period of 60 days, the petitioner commenced the construction of row houses as per the deemed provision under Section 214 of the Andhra Pradesh Municipalities Act (herein after referred to as "the Act"). After commencement of the construction, the second respondent issued a notice dated 22-8-2003 under Section 228 of the Act calling upon the petitioner to show cause as to why the construction shall not be removed as no permission was granted by the Municipality. Though the petitioner submitted a reply to the show cause notice, the second respondent passed final order dated 26-9-2003 for demolition of the structures already constructed by the petitioner. The said order was questioned in W.P.No.21557 of 2003 on the file of this Court and the said writ petition was disposed of by the following order:-

> "**It is not in dispute that the petitioner has submitted two applications** together with plans on 24-6-2003 for sanction of permission to construct eight houses on each plot. Section 214 of the Act mandates that any application seeking permission to construct the houses shall be disposed of within 60 days from the date of application and the failure to communicate the decision on such application shall result in existence of a deemed permission in favour of the applicant. The respondent did not choose to either grant or reject the permission within the time stipulated under Section 214. It may be true that the matter was pending consideration at the Director of Town and Country Planning. That however is not a situation, which is saved under Section 214 of the Act. Whatever be the reason for non consideration of the application or non communication of the decision, once it emerges that the Commissioner has not sanctioned or rejected the application within sixty days, permission shall be deemed to have been accorded. Therefore, it cannot be said that the petitioner was not entitled to proceed with the construction.

This however, does not resolve the controversy. It is settled principle of law that even under a deemed permission, an applicant is required to make the construction strictly in accordance with the relevant bye laws and orders issued from time to time under the provisions of the Act. A person cannot be permitted to make a construction of his own choice under the umbrella of deemed commencement of the construction by the petitioner, he is required to make construction, strictly in accordance with the relevant bye laws. The notices issued by the respondent under various sub sections of Section 228 of the Act do not disclose the nature of deviations or violations said to have been committed by the petitioner. It is only where such deviations are pointed out, the petitioner can be required to conform to the same.

Therefore, the Writ Petition is disposed of, directing that it shall be open to the respondent to point out and communicate the nature of deviations, if any, in the construction undertaken by the petitioner. Till such time, the petitioner shall not proceed with construction. Once the deviations, if any are pointed out and communicated to the petitioner, he shall ensure that such deviations do not exist in the construction. If he feels aggrieved by any such conditions he can make representation to the respondent. No costs".

Pursuant to the said order, the second respondent issued a notice in letter Roc.No.G/714/2003, dated 28-2-2004 directing the petitioner to comply the following conditions:-

1. The proposed site falls in an-approved layout and requires layout and subdivision approval.

2. The approach road to the proposed site must be 40'-0" wide.

3. The 10% open space is mandatory as per the layout rules.

4. Building set back requirements for individual buildings as per G.O.Ms.No.422 M.A., dated 31-7-1998, para 5.13 shall be followed.

It is further stated in the notice that the said row houses cannot be treated as row houses since the petitioner has constructed the individual houses and the existing building do not conform to the building rules given in G.O.Ms.No.422 M.A., dated 31-7-1998 in respect of the open spaces for individual buildings. Therefore, the

petitioner was directed to rectify the above mentioned defects and submit the same to the local authority for taking further action. Aggrieved by the said notice, the present writ petition has been filed.

It is case of the petitioner that pursuant to the application filed by him on 14-4-2003 and pursuant to the resolution of the Municipal Council No.310, dated 26-4-2003, the Commissioner, Wanaparthy Municipality addressed a letter Roc. No. G1/724/2003, dated 26-6-2003 to the Director of Town and Country Planning, Hyderabad stating that the proposed site surrounding developed residential colonies and it is falling in the residential area as per the Master Plan proposals and the petitioner paid Rs.23,500/- towards building permission fee, betterment charges, development charges and vacant land tax and the application of the petitioner was placed before the council for forwarding the same to the Director of Town and Country Planning, Hyderabad/first respondent for approval. It is further stated that there are existing roads on the Northern, Southern and Western sides and the Northern and Southern side roads leads to Kurnool 100' approach road and the proposed site surrounding developed residential colonies and pucca houses and therefore, the proposals for construction of row houses for necessary approval was sent to the first respondent.

It is further stated that pursuant to the letter dated 26-6-2003, the first respondent vide his letter dated 19-8-2003 informed the second respondent that the proposal is rejected, stating that after examining the proposal for construction of row houses in question falls in unauthorisedly developed area without any layouts, roads etc., as they have shown existing 20' wide roads on two sides and 15' wide road was shown other two sides and thereafter certain existing plots and after the said plots, 100' main road leading to Kurnool was shown. It is stated that after one side of the 15' existing road, L.I.C., Buildings and plots are there abutting either side of 15' wide road and on the other two sides, existing houses are there having 20' wide road. Therefore, the second respondent issued another notice dated 28-9-2003, directing the petitioner not to proceed with the

unauthorized constructions. Thereafter pursuant to the earlier order of this Court, the impugned notice has been issued.

It is the case of the petitioner that the second respondent cannot refuse the permission for construction of row houses as they were already constructed under the deemed provision and it cannot be said that the said constructions are contrary to the regulations of floor area ration and other building rules as enunciated in G.O.Ms.No.422, M.A., dated 31-7-1998. It is stated that when already several houses of L.I.C., buildings etc., are there, the question of again making the lay out of said area does not arise. It is stated that the petitioner cannot make the existing road into 40' wide road as already houses are come up in the existing area. In so far as the third defect is concerned, it is stated that the petitioner is prepared to maintain more than 20' wide road. In so far as the 4th defect is concerned, it is stated that they are not the individual houses, but they are row houses and therefore para 5.13 of G.O.Ms.No.422 will not apply as it applies to the individual houses up to 300 Sq. yards of the plot area, but the relevant para that is applicable is 5.2 for row housing. It is stated that the petitioner has fulfilled all the requirements of para 5.2 of the said Government Order except minor set backs.

The respondents filed their separate counters stating that the construction of row houses is contrary to the provisions of G.O.Ms.No.422. It is stated that the petitioner has purchased two old houses in the un-authorised colony and has made illegal division of the land and proceeded with un-authorised constructions in the land. If the land purchased by the petitioner is covered by old houses, I am of the opinion that insisting upon the fresh lay out may not be just and proper.

Having regard to the facts and circumstances of the case, the petitioner is liable to comply the requirements in para 5.2 relating to row houses in G.O.Ms.No.422, M.A., dated 31-7-1998, which is the relevant rule applicable to the petitioner. Therefore, the petitioner is directed to file a fresh application before the second respondent and

on filing such an application, the second respondent will consider and pass appropriate orders, keeping in view of the residential houses which are already existing in the locality.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

Date: 6-4-2006.

Shr.